

**REMARKS**

This Application has been carefully reviewed in light of the Office Action electronically delivered July 2, 2007. The Examiner rejects Claims 1-7, 9, and 10. Applicant respectfully traverses these rejections. Nonetheless, Applicant amends Claims 2-6 for purposes of advancing prosecution. Applicant previously canceled Claim 8 without prejudice or disclaimer. Applicant respectfully requests reconsideration and favorable action in this case.

**Section 101 Rejections**

The Examiner rejects Claim 9 under 35 U.S.C. § 101 stating that the claimed invention is allegedly directed to non-statutory subject matter. Applicant respectfully traverses this rejection. At the outset, Applicant respectfully traverses the Examiner's assertion that the "workflow manager" and "contextual visualization" are limited to modules and program codes. While the language of Claim 9 does not exclude such embodiments, Applicant respectfully submits that it is inappropriate to limit the language of Claim 9 solely to embodiments in which "workflow manager" and "contextual visualization" are "modules" or "program codes" as the Examiner does in rejecting Claim 9.

Applicant further notes that, to the extent the Examiner is asserting that Claim 9 claims non-statutory subject matter as a result of the fact that certain embodiments of Claim 9 may, at least in part, cover software, the mere fact that software is included within the scope of a claim does not render the claim unpatentable. As the M.P.E.P. notes, "[c]omputer programs are often recited as part of a claim." Thus, software is not excluded from the patentable subject matter identified by 35 U.S.C. § 101. *See, e.g., Eolas Techs. Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1339, 73 U.S.P.Q.2d. 1782, 1793 (Fed. Cir. 2005) ("Without question, software code alone qualifies as an invention eligible for patenting under these categories, at least as processes."). Claim 9 therefore claims patentable subject matter and is thus allowable under 35 U.S.C. § 101.

If the rejection of Claim 9 under 35 U.S.C. § 101 were the only issue remaining in the Application, Applicant would consider amending Claim 9 according to a suggestion from the Examiner to expedite issuance of a patent from this Application. However, given the fact that the Examiner has not provided such a suggestion and, as discussed above, Applicant's

belief that Claim 9 recites patentable subject matter in its current form, Applicant has not made such amendments in this Response.

### **Section 112 Rejections**

The Examiner also rejects Claims 2-6 under 35 U.S.C. § 112, second paragraph, as allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses this rejection. For purposes of advancing prosecution, however, Applicant amends Claims 2-6 to address the Examiner's concerns.

### **Section 103 Rejections**

The Examiner rejects Claims 1-7, and 9-10 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,958,012 issued to Battat et al. ("*Battat*") in view of Internet documents entitled "Cognos (R) Introduces Unparalleled Foundation for End-to-End Business Intelligence" ("*Cognos*"), "PeopleSoft Announces Balanced Scorecard for Strategic Decision-Making" ("*PeopleSoft*"), and "Oracle Delivers Global Sales and Marketing Analysis to the Web" ("*Oracle*"). Applicant respectfully traverses this rejection.

Claim 1 recites:

A method for reporting a value of a key performance indicator comprising:

receiving information identifying a key performance indicator to monitor;

identifying at least one business event associated with the selected key performance indicator;

receiving a business event message indicating an occurrence of the business event, the business event message including business data describing the business event;

in response to receiving the business event message, electronically determining the value of the key performance indicator based on the business data; and

displaying the determined value of the key performance indicator via a contextual visualization interface.

*Battat*, *Cognos*, *PeopleSoft*, and *Oracle*, alone and in combination, fail to disclose, teach, or suggest every element of Claim 1. For example, the proposed *Battat-Cognos-PeopleSoft-Oracle* combination fails to disclose "receiving information identifying a key performance indicator to monitor." Thus, as discussed further below, the proposed *Battat-*

*Cognos-PeopleSoft-Oracle* combination fails to disclose, teach, or suggest every element of Claim 1.

At the outset, Applicant respectfully notes that the Examiner fails to identify within *Battat* the specific elements the Examiner equates with the elements of the rejected claims. Instead, the Examiner cites to the entirety of over a page-and-a-half of text and all of Figure 3, a figure showing a significant number of elements, without providing any indication of which elements of the cited reference the Examiner equates with the claimed subject matter. Applicant respectfully notes that “[w]hen a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable.” 37 C.F.R. § 1.104(c)(2). Applicant respectfully notes that the principles of compact prosecution require that the Examiner provide a clear indication as to the basis of the Examiner’s rejections so that Applicant may fully address the Examiner’s rejection and advance prosecution. (“The Office’s policy of compact prosecution requires that both examiners and applicants provide the information necessary to raise and resolve the issues related to patentability expeditiously.” *Official Gazette Notice*, October 7, 2003). Indiscriminately citing to large portions of a reference without providing Applicant any indication of which elements the Examiner believes teach the claimed subject matter do not advance the cause of compact prosecution. Thus, Applicant respectfully requests that, if the Examiner continues to utilize these references in rejecting any of the claims of this Application, the Examiner identify the specific elements of *Battat* that the Examiner equates with the elements of the present claims.

Returning to the rejection, Applicant respectfully notes that the proposed *Battat-Cognos-PeopleSoft-Oracle* combination fails to disclose “receiving information identifying a key performance indicator to monitor.” In particular, *Battat* discloses a “system and apparatus for visualizing the components of a computer network system as a realistic three-dimensional environment for the purposes of systems and network management.” *Battat*, col. 4, ll. 47-50. In addressing Claim 1, the Examiner references all of “steps (301), (302), (303), (304), (305), (306), (307), (308), (309), (310), and (311), Fig. 1, Fig. 10j, col. 8-9, col. 15, lines 22-40).” *Office Action*, pp. 3-4. Nonetheless, the Examiner fails to provide any explanation as to how the extensive portions of cited text and figures disclose “receiving

information identifying a key performance indicator to monitor” as required by Claim 1. Applicant respectfully submits that *Battat* does not disclose the relevant limitation.

The Examiner is silent as to whether any of *Oracle*, *PeopleSoft*, and/or *Cognos* discloses “receiving information identifying a key performance indicator to monitor.” Because *Battat*, as noted above, fails to disclose this element of Claim 1, the Examiner fails to show that the proposed *Battat-Cognos-PeopleSoft-Oracle* combination discloses, teaches, or suggest every element of Claim 1. As a result, the Examiner fails to provide a *prima facie* case of obviousness with respect to Claim 1.

Furthermore, Applicant respectfully notes that the proposed *Battat-Cognos-PeopleSoft-Oracle* combination is improper. First, *Battat* is non-analogous art to *Cognos*, *PeopleSoft*, and *Oracle* and, as such, it would not be obvious to one skilled in the art to attempt the proposed combination. *Battat* relates to a system for managing computer components (*Battat*, Abstract, emphasis added) while *Cognos* discloses a “tool that rapidly builds and deploys subject area data marts with integrated business intelligence (BI)” (*Cognos*, p. 1, ¶ 1, emphasis added), *PeopleSoft* discloses an “application designed to help managers develop and execute organizational strategy” (*PeopleSoft*, p. 1, ¶ 3, emphasis added), and *Oracle* discloses a product that allows users to “analyze e-business sales and marketing data via a standard Web browser” (*Oracle*, p. , ¶ 1., emphasis added.) It would not have been obvious to one skilled in the art of networking and managing computer components to combine the non-analogous elements disclosed by any of *Cognos*, *PeopleSoft*, or *Oracle* with the system of *Battat*.

Second, Applicant respectfully notes that, for an obviousness rejection to be appropriate, the Examiner must “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *KSR Intern. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742. (2007). “[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *Id.* Applicant respectfully submits that the Examiner’s explanation for combining the cited references does not identify a legitimate reason why one skilled in the art would have been prompted to combine the cited references as proposed. With respect to combining *Oracle* with *Battat*, the Examiner states only that “[i]t would have been obvious to modify the teachings of BATTAT et al to further include

KPI application as taught by [Oracle] for at least one of the many benefits cited above.” *Office Action*, p. 4. The benefits referenced by the Examiner, however, are benefits that *Cognos* allegedly provides by itself. The Examiner provides similar reasons for combining *PeopleSoft* and *Cognos* with the system of *Battat*. Nonetheless, in each case, the Examiner cites benefits allegedly provided by the secondary reference individually as motivation for combining the secondary reference with *Battat*. Benefits provided by a particular secondary reference on its own are not a sufficient reason to combine any of the secondary references with *Battat* as the relevant secondary reference already provides such benefits without any combination or modification. As a result, the Examiner fails to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements of *Battat* with any of the cited secondary reasons. The proposed combination of *Battat* with *Oracle*, *PeopleSoft*, and/or *Cognos* is thus improper for at least these reasons.

As a result, the proposed *Battat-Cognos-PeopleSoft-Oracle* combination fails to disclose, teach, or suggest every element of Claim 1. Additionally, the proposed *Battat-Cognos-PeopleSoft-Oracle* combination is improper. Claim 1 is thus allowable for at least these reasons. Applicant respectfully requests reconsideration and allowance of Claim 1 for at least these reasons.

Although of differing scope from Claim 1, Claims 9 and 10 include elements that, for reasons substantially similar to those discussed with respect to Claim 1, are not disclosed, taught, or suggested by the proposed *Battat-Cognos-PeopleSoft-Oracle* combination. Additionally, as noted above, the proposed *Battat-Cognos-PeopleSoft-Oracle* combination is improper. Claims 9 and 10 are thus allowable for at least these reasons. Applicant respectfully requests reconsideration and allowance of Claims 9 and 10.

Several of the dependents of Claim 1 also include elements not disclosed, taught, or suggested by the proposed *Battat-Cognos-PeopleSoft-Oracle* combination. For example, Claim 5 recites:

A method according to claim 1, wherein the business event message describes a task completion event.

In addressing Claim 5, the Examiner states references Figures 3 and 3A of *Battat*. Neither figure discloses any form of “task completion event” however. Thus, the proposed *Battat-Cognos-PeopleSoft-Oracle* combination further fails to disclose at least “wherein the business event message describes a task completion event.” Furthermore, Applicant

respectfully contests the Examiner's assertion that any elements of Claim 5 are "non-essential to the scope of the claimed invention." *Office Action*, p. 6. Applicant respectfully reminds the Examiner that "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. § 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970)).

As a result, the proposed *Battat-Cognos-PeopleSoft-Oracle* combination fails to disclose additional elements of Claim 5. Claim 5 is thus allowable for at least this reason. Although of differing scope from Claim 5, Claims 2-4 and 6 include additional elements that, for reasons substantially similar to those discussed with respect to Claim 5, are not disclosed by the proposed *Battat-Cognos-PeopleSoft-Oracle* combination. Applicant respectfully requests reconsideration and allowance of Claims 2-6.

**Conclusions**

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicant stands ready to conduct such a conference at the convenience of the Examiner.

No fees are believed to be due, however, the Commissioner is hereby authorized to charge any fees or to credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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